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In the Supreme Court of the United States

OCTOBER TERM, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

REVERE METAL ART CO., INC., AND AMALGAMATED UNION, LOCAL 5, UAW, INDEPENDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the decree of the United States Court of Appeals for the Second Circuit in this case insofar as it denies enforcement of the Board's order.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix, *infra*, pp. 15-31) is not yet reported. On petition for rehearing filed by the Board, a supplemental opinion (Appendix, *infra*, pp. 32-34) was entered by the Court of Appeals on June 16, 1960; it is not yet re-

ported. The findings of fact, conclusions of law, and order of the Board (R. 2-23)[1] are reported at 123 NLRB 114.

JURISDICTION

The first opinion of the Court of Appeals was entered on May 6, 1960. Its opinion denying rehearing was entered on June 16, 1960. The Court entered its decree (Appendix, *infra*, pp. 35-40) on July 26, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

The National Labor Relations Act prohibits discrimination in employment because of non-membership in a labor organization, except to the extent that union security agreements are permitted by the provisos to Section 8(a)(3). The first proviso to Section 8(a)(3) sanctions agreements which condition employment upon obtaining union membership on or after thirty days following employment or the execution of the agreement, whichever is later. The second proviso adds, however, "That no employer shall justify any discrimination against an employee for non-membership in a labor organization . . . if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender . . . periodic dues and . . . initiation fees. . . ."

The question presented is whether a union security agreement which conditions employment upon member-

[1] "R" references are to the appendix to the Board's brief in the court below.

ship in good standing in accordance with union rules and regulations constitutes unlawful discrimination, under the second proviso to Section 8(a)(3), where such rules and regulations require compliance with union obligations in addition to the payment of dues and initiation fees.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).
>
> Sec. 8. (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it:
>
> * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made; * * * and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable

grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

STATEMENT

A. *The Board's decision and order*

In June, 1956, Amalgamated Union, Local 5, UAW, Independent ("the Union") began an organizational campaign among the employees of Revere Metal Art

Company ("the Company") at its plant in New York City. At the end of August, although the Union had obtained only 18 designation cards from the 56 employees involved, the Company granted recognition to the Union as the bargaining representative of its employees. Thereafter, additional cards were signed, for the most part at the solicitation of Company supervisors and in some instances under threat of discharge. Following negotiations, a collective bargaining contract was executed by the Company and the Union on November 13, 1956 (R. 23, 3-7).

The contract contained both recognition and union security clauses. As applicable to new employees, the union security provision required, as a condition of their employment, that they became Union members within the period prescribed by the Act, and that they "remain in good standing in the Union in accordance with the Union rules and regulations for the duration of this agreement" (R. 8; 133). The Union's Constitution and By-laws conditioned the retention of membership upon the performance of a number of obligations in addition to the payment of dues and fees, including, *inter alia*, such matters as the payment of fines and assessments, and the performance of picket duty during a strike (R. 9; 142-145, 147).

The National Labor Relations Board concluded, upon the foregoing facts, that the Company and the Union, by entering into a contract under which the Union was granted recognition when it did not represent a majority of the employees, violated Sections 8 (a) (1) and (2), and 8 (b) (1) (A) of the National Labor Relations Act, respectively. The Company was also found

to have violated Section 8 (a) (1) and (2) of the Act by its solicitation of employees on behalf of the Union. (R. 23, 11-12.)

Violations of Section 8(a)(1), (2) and (3) by the Company, and of Section 8(b)(1)(A) and (2) by the Union, were also predicated on the inclusion of the union security clause in the contract. This clause was found to be unlawful because it was entered into with a minority union that had been assisted by the Company (see the first proviso to Section 8(a)(3)), and also because it conditioned employment upon the performance of "obligations to the Union on the part of employees other than the payment of initiation fees and dues . . ." (R. 12).

The Board's order enjoins the violations found and requires certain affirmative action. A provision of the order is specifically directed to the union security clause found to be unlawful; it requires the Company and the Union to cease and desist from "entering into, maintaining, renewing, or enforcing any agreement . . . which provides for obligations to the Union on the part of employees other than the payment of initiation fees and dues . . . as a condition of employment . . ." (R. 24, 27).

B. *The decision of the court of appeals*

The court below enforced the Board's order in all respects other than the cease and desist provisions directed against execution or maintenance of a union security agreement which obligates employees to comply with membership requirements other than the payment of union initiation fees and regular dues. The

court concluded that the Act proscribes the *enforcement* of a contract which conditions employment upon satisfying those requirements, but does not make the mere *execution or maintenance* of such a contract unlawful. Noting that the union security agreement satisfied on its face the thirty-day requirement for validity under the first proviso to Section 8(a)(3) of the Act, the court drew a distinction between that proviso and the second proviso, holding that, although the former prescribed conditions for the making of a union security agreement, the second proviso "simply prohibits an employer from justifying any discrimination against an employee [upon grounds other than the non-payment of dues and fees]". (Appendix, *infra*, p. 26). The court added that "if the statute stood alone, [it] would be much inclined to depart from a literal reading in favor of a view that Congress intended to prohibit . . . also the creation of a setting in which employees would think discrimination by the employer would likely ensue . . ." (*ibid.*). However, the court found support for its reading of the statute in the legislative history of the second proviso, and in the contrasting manner in which Congress had handled the problem under the Railway Labor Act (Appendix, *infra*, pp. 26-29).

On rehearing, the court wrote a second opinion in which it "recognize[d] the question to be debatable" but adhered to its initial decision (Appendix, *infra*, p. 34).

REASONS FOR GRANTING THE WRIT

1. The decison of the court below is in conflict with the decision of the Court of Appeals for the Ninth Circuit in *National Labor Relations Board* v. *International*,

Association of Machinists, Lodge 1254, 241 F. 2d 695. In the *Machinists* case, the Ninth Circuit held that a union security agreement which conditioned continued employment upon payment to the union of "initiation fees, monthly dues and general assessments" was invalid on its face because the assessments requirement exceeded the permissible scope of union security provisions under the Act. 241 F. 2d at 696-697, enforcing 111 NLRB 1055, 1057. Although the validity of the contract in that case was questioned only under Sections 8(b)(1)(A) and 8(a)(1) of the Act (see 111 NLRB at 1057), and not under Sections 8(b)(2) and 8(a)(3) as here, the court below, in discussing the result in the Ninth Circuit case, correctly points out (Appendix, *infra*, p. 34) that the ultimate issue in both cases is the same, *i.e.*, the proper interpretation of the second proviso to Section 8(a)(3). Thus, Sections 8(a)(1) and 8(b)(1)(A) proscribe interference with Section 7 rights, and Section 7 in turn expressly immunizes union security agreements that are "authorized in section 8(a)(3)." Sections 8(b)(2) and 8(a)(3) proscribe discrimination which encourages union membership, except to the extent permitted by the provisos to Section 8(a)(3). Accordingly, whether the union security agreement be challenged under Sections 8(b)(1)(A) and 8(a)(1) or under Sections 8(b)(2) and 8(a)(3), the answer turns on whether the agreement conforms to the provisos to Section 8(a)(3).[2]

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[2] The Board's finding of a violation of Section 8(a)(2)—in addition to violations of Sections 8(b)(1)(A), (b)(2) and 8(a)(1) and (a)(3)—based on the execution and maintenance of a union security agreement with the type of clause here (p. 7, *supra*), also is governed by the interpretation given the second proviso to Sec-

Hence, the conclusion of the Ninth Circuit—that an agreement which requires payments to the union in excess of dues and initiation fees is unlawful—necessarily rests upon an interpretation of the second proviso to Section 8(a)(3) contrary to that adopted by the court below.

2. The question whether the Act condemns a union security agreement which imposes obligations in addition to the payment of dues and initiation fees, or merely prohibits the enforcement of such a contract, is not an academic issue, but one of major importance in the administration of the Act. Although relatively few unfair labor practice cases have arisen which involve the contract alone, apart from its enforcement, the Board must constantly determine the legality of contracts with those clauses in deciding whether they operate as bars to representation elections. Thus, under its contract bar policies, the Board, in the interest of stabilizing labor relations during a contract period, ordinarily refuses to conduct an election during the life of a *valid* contract of two years duration or less. Contracts containing illegal union security clauses, however, do not bar elections, and the Board has consistently held that agreements which condition employment upon the fulfillment of union obligations in addition to the payment of dues and fees are beyond the permissive language of Section 8(a)(3), and therefore do not pre-

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tion 8(a)(3). The employer assistance to labor organizations which Section 8(a)(2) proscribes reaches only invalid union security agreements, and the clause here would be invalid only if the Board's interpretation of the second proviso to Section 8(a)(3) were accepted.

clude the conduct of an election.[3] The decision below places the validity of the Board's holdings in these cases in serious doubt. The appropriateness of resolving the question in this proceeding, moreover, is emphasized by the limitations on obtaining review of representation petitions dismissed by the Board. Cf. *Leedom* v. *Kyne*, 358 U.S. 184.

3. The decision below presents a substantial question of statutory interpretation. As the court below recognizes, it has adopted "a literal reading" of the term "discrimination" in the second proviso to Section 8(a)(3)—one which tolerates "the creation of a setting in which employees would think discrimination by the employer would likely ensue . . ." (Appendix, *infra*, p. 26). Indeed, were all of the Act's union security provisions read in similar fashion, even the enforcement of concededly valid union security clauses would be proscribed, for the first proviso to Section 8(a)(3) literally authorizes only the "making [of] an agreement" providing for union security—not its enforcement. Such literalism, however, cannot be harmonized with the basic Congressional policy underlying Section 8(a)(3). As summarized by this Court in *Radio Officers* v. *National Labor Relations Board*, 347 U.S. 17, 40-42.

> . . . Sections 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members,

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[3] *E.g.*, *National Brassiere Products*, 122 NLRB 965 (payment of work permit fees); *United States Chaircraft Mfg. Corp.*, 122 NLRB 1352 (union made sole judge of "bad standing"); *International Harvester Co.*, 95 NLRB 730, *Continental Can Co.*, 98 NLRB 1252,

> or abstain from joining any union without imperiling their livelihood. . . . This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. . . . No other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned.

An agreement which conditions employment upon compliance with all union rules and regulations runs contrary to this Congressional purpose, no less than the actual enforcement thereof. The threat of discharge if the employee does not comply with the union rules, implicit in the existence of the contract itself, would tend to induce compliance and impinge upon the freedom from such obligation which the Act was designed to afford.[4]

Nor does the legislative history warrant the conclusion reached by the court below. To be sure, the language of the House bill, which proscribed both "making

National Malleable, 99 NLRB 737 (clause requiring "fees, dues and assessments"). See also, the comprehensive statement in *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880, 883-884, of the criteria by which the Board will adjudge the validity of a contract for contract bar purposes.

[4] Cf. the Board holdings, affirmed by two courts of appeals, that a union violates Section 8(b)(1)(A) of the Act by threatening employees with loss of their jobs unless they pay union fines or comply with other obligations apart from the payment of dues and initiation fees. See *e.g.*, *Eclipse Lumber Co.*, 95 NLRB 464, 471, enforced, 199 F. 2d 684, 687 (C.A. 9); *Spector Freight System, Inc.*, 123 NLRB 43, 44, n. 2, enforced, 273 F. 2d 272 (C.A. 8), certiorari denied, 362 U.S. 962; *Local 271, I.A.M.* (*Hardie-Tynes Mfg. Co.*), 123 NLRB 426; *Great Atlantic & Pacific Tea Co.*, 110 NLRB 918.

effective and carrying out" an agreement which conditioned continued employment on union obligations in addition to dues and initiation fees, was rejected in favor of the Senate bill, which first specified the conditions for making a union security agreement and then added that there shall be no discrimination against an employee for failure to fulfill such additional union obligations (Appendix, *infra*, pp. 26-28). However, there is nothing in the legislative history, and particularly in the House Conference Report, which suggests that the adoption of the Senate language was designed to make the distinction which the court below has drawn between a discriminatory agreement, standing alone, and its actual enforcement. Since such a distinction appears incompatible with the broad purposes of the union security provision, it is only reasonable to infer that, had Congress intended to differentiate, it would have explained why. Instead, the thrust of the Conference Report is that both bills "abolished the closed shop" and permitted a limited form of "the union shop or maintenance of membership."[5] In our view, the difference in language between the House and Senate bills does not reflect a difference in scope, but merely the fortuitous circumstance that the House bill dealt with the union security problem in an entirely new section (see Appendix, *infra*, pp. 26-27), whereas the Senate bill dealt with the matter by adding provisos to the existing Section 8(a)(3). Since Section 8(a)(3) already broadly proscribed "discrimination in regard to hire or tenure of employment or any term or condition of em-

[5] H. Conf. Rep. 510, 80th Cong., 1st Sess., p. 41, 1 Leg. Hist. of the Labor-Management Relations Act, 1947 (G.P.O., 1948), p. 545.

ployment to encourage or discourage membership in any labor organization," the Senate draftsmen presumably believed that the term "discrimination" in the second proviso would likewise be given full scope and that it was unnecessary to specify that it covered both the maintenance of a discriminatory contract and its actual enforcement.[6]

CONCLUSION

For the reasons stated, this petition for certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1960.

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[6] The court's reliance on the wording of the union security provision of the Railway Labor Act (Appendix, *infra*, pp. 28-29) affords no firmer footing for its interpretation. The considerations which motivated the Congress which enacted that legislation have no clear or necessary relation to those which motivated the earlier Congress which enacted the Taft-Hartley amendments to the National Labor Relations Act.

APPENDIX

1. *Opinion of May 6, 1960*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 242—October Term, 1959

(Argued March 3, 1960 Decided May 6, 1960)

Docket No. 25868

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

REVERE METAL ART CO., INC., and AMALGAMATED UNION LOCAL 5, UAW, INDEPENDENT, RESPONDENTS

Before: LUMBARD, *Chief Judge*, MOORE AND FRIENDLY, *Circuit Judges*

Petition of National Labor Relations Board for enforcement of order, 123 N. L. R. B. No. 16, finding that employer and union had engaged in unfair labor practices by coercing employees to join union and by making unlawful union security agreement, and directing cessation of such practices and reimbursement of employees for monies paid or checked off as a condition of employment pursuant to the agreement. The cease and desist provisions with respect to the terms of a new union security agreement are modified and enforcement is granted.

FRIENDLY, *Circuit Judge*:

The National Labor Relations Board petitions for enforcement of an order, 123 N. L. R. B. No. 16 (1959), finding that Revere Metal Art Co., Inc., and Amalgamated Union, Local 5, UAW, with which Revere had

entered into a union security agreement, had engaged in unfair labor practices in violation of §§8(a)(1), (2) and (3) and 8(b)(1)(A) and (2) of the Labor Management Relations Act, 29 U. S. C. §158. The order required cessation of recognition of the union and of performance of the collective bargaining agreement unless and until the union had demonstrated its majority status through a Board-conducted election. It directed the company and the union, jointly and severally, to reimburse employes for any initiation fees, dues or other monies paid or checked off as a condition of employment pursuant to the agreement. And it also forbade the company and the union from "entering into, maintaining, renewing, or enforcing any agreement * * * which provides for obligations to the Union on the part of employees other than the payment of initiation fees and dues as a condition of employment, or which grants the Union exclusive recognition or which requires employees to join, or maintain their membership in the Union as a condition of employment, unless such agreement which grants exclusive recognition or requires membership has been authorized as provided in Section 8(a)(3) of the Act."[1]

The company does not oppose enforcement; the union does. We hold the Board was warranted in finding that the employer and the union had engaged in unfair labor practices. We sustain also the remedies imposed in the order, including the reimbursement of initiation fees and dues, save only the prohibition of any new union security agreement that provides obligations by employees to the union other than payment of dues and initiation fees as a condition of employment. As to this we think the order went beyond the powers granted the Board by Congress.

[1] The quotation is from the cease and desist provision as to the union; the provision with respect to the company was similar.

Revere has its principal office and place of business in New York City where it is engaged in the manufacture and interstate sale and distribution of pen parts. In the summer of 1956 the union began a campaign among Revere's employees, and organizational picketing began. By August the campaign was adversely affecting production. Following the alleged discriminatory discharge of an employee in mid-August, the picket line declared the company unfair, and Revere was cut off from essential supplies and services.

At the end of August, on instructions from the president of the company, counsel for Revere arranged for a meeting to be held with the union on September 10 to negotiate a collective bargining agreement. The discharged employee returned to work and the picketing ceased. At this time Revere had 58 employees in the unit bargained for with the union. It made no investigation to determine whether the union represented a majority. The president was satisfied with the union organizer's having "shuffled," "flashed" or "flipped" in his presence some 27 to 29 cards, the first few of which bore the names of persons recognized as employees, and with the statement of the plant foreman "that he was inclined to believe that the union probably had a majority." No check was made against payroll or other records. Indeed if is not even clear the company knew whether the cards were signed at all, save the first few. At the hearing only 18 cards signed prior to September 1 were produced.

Negotiations for a union contract continued during the fall. The union organizer came to the plant in order to get additional cards signed. The plant foreman persuaded the organizer to leave the cards with him. The president told the foreman to have the cards signed but not to turn them over to the union organizer. On October 24 the foreman obtained signatures to 24 cards.

about a third of these being duplicates of cards already signed. He accomplished this by presenting the cards to employees who were sent down to him "a couple at a time to get their checks and sign the cards." The foreman admitted that one worker was told that "he had to join the union or he would be fired. As far as I knew, that is what the procedure was." An employee testified the foreman gave him a card and said "you have to sign and give it back to me."

An agreement wherein Revere recognized Local 5 as exclusive bargining representative of the employees in the unit was executed on November 13. This contained a clause requiring all employees to become members of the union within 30 days after the date of the agreement or, in the case of new employees, after the date of their employment and thereafter to continue to remain members of the union in good standing as a condition of employment. The constitution and by-laws of the union have numerous requirements for remaining a member in good standing other than the payment of initiation fees and dues. Fines may be levied by the executive board on any member found guilty of violating the constitution, by-laws or union rules. A member is required to leave the job immediately when ordered out on strike and to aid and picket when so directed and is forbidden to seek redress in any court before first seeking it through union channels. Violation of any of these obligations is expressly subject to such penalty, by way of fine, suspension or expulsion, as the executive board may direct. Assessments and fines must be paid before regular dues can be accepted.

After charges by an employee, complaint and hearing, the Board's trial examiner concluded that the company had violated §8(a) (1), (2) and (3) and that the union had violated §8(b) (1) (A) and (2) of the Act. On exceptions taken by the union, the Board affirmed and entered the order previously described.

The evidence clearly warranted the finding that a majority of the employees had not authorized the union to represent them, either when the company began negotiations with the union in September or when it signed the agreement granting exclusive recognition on November 13. At most 18 of the 58 employees had signed authorizations prior to September, and the additional signatures obtained by the plant foreman in October cannot be counted since these resulted from action forbidden the employer by §§8(a) (1) and (2) and the union by §8(b) (1) (A). We need not determine whether, as urged by the Board and disputed by the union, these sections condemn the mere fact of the grant of exclusive recognition to and the receipt of such recognition by a union which had not been authorized by a majority, although we see the force of the Board's argument and the Fifth Circuit regards the proposition as "well-settled," *Dixie Bedding Manufacturing Co.* v. NLRB, 268 F. 2d 901, 905 (1959). Cf. *NLRB* v. *Drivers, Chauffeurs, Helpers, Local Union No. 639*, Supreme Court of the United States, March 28, 1960; *NLRB* v. *Local 294, International Brotherhood of Teamsters, etc.*, 2d Cir., April 4, 1960. Here the evidence that the employees were summoned to the plant foreman's office, were there presented with cards authorizing union check-off when being given their paychecks, and were told they had to sign, showed coercion in the most literal sense. The Board was likewise justified in finding that the execution of an agreement with a union security clause was an unfair labor practice by the employer under §8(a) (3) and by the labor organization under §8(b) (2). Such an agreement is permitted, *inter alia*, only when the labor organization is "not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice" and when it "is the representative of the employee as provided in §9(a)," and §9(a) requires that the repre-

sentative be "designed or selective for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." The agreement here failed on both counts. *NLRB* v. *John Engelhorn & Sons*, 134 F. 2d 553 (3d Cir. 1943).

Since the union had thus been unlawfully imposed as exclusive bargaining agent upon the employees and the union security clause was unlawful in its inception, it was proper for the Board to strike down the agreement and to require that the union desist from representing the employees and to prohibit any further union security agreement until the union had demonstrated its majority status in a Board-conducted election.

We likewise decline to interfere with the Board's direction that the employer and the union jointly and severally reimburse the employees for initiation fees, dues or other monies paid or checked off as a condition of the employment pursuant to the union security agreement.[2] This Court said in *NLRB* v. *Adhesive Products Corp.*, 258 F. 2d 403, 409 (2d Cir. 1958), "The validity of reimbursement orders necessarily depend upon the peculiar circumstances of each particular case." While we annulled similar reimbursement orders in *Morrison-Knudsen Co.* v. *NLRB* and *Building Material Teamsters Local 282* v. *NLRB* (2d Cir., both decided March 2, 1960), the circumstances there were quite different from the instant case. Neither of those

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[2] In answer to a question from the Court as to how orders imposing a joint and several reimbursement liability upon employer and union are applied, the Board, calling our attention to decisions respecting back pay orders, wherein the regional offices have been directed to "take all reasonable measures to insure that the back pay liability is borne equally" by both respondents, *Ebasco Services, Inc.*, 107 N. L. R. B. 617, 621 (1953), states that informal instructions have been given these offices to follow the same policy in cases involving joint and several company-union liability for the reimbursement of dues and fees illegally exacted from employees.

cases related to a union imposed on employees in violation of §§8(a)(1) and (2) and 8(b)(1)(A). Both related to discrimination violating §§8(a)(3) and 8(b)(2). *Morrison-Knudsen* through the method of operation of an exclusive hiring hall, and *Local 282* because of the absence of the required 30-day clause in a union security agreement. Both concerned unions admittedly representing the majority of the employees and long recognized as such. In the *Local 282* case there was "not a syllable of evidence that * * * the omission of the 30-day clause in fact had any coercive effect" and indeed "no suggestion that anyone would have acted one whit differently if the 1956 agreement had contained the prescribed 30-day clause.". In the *Morrison-Knudsen* case the order was directed solely against the employer, the discrimination related to a small number of employees out of a large group, and the opinion enumerates other special factors making reimbursement an arbitrary remedy there. Slip opinion, pp. 921-922. Here on the contrary there was substantial evidence that a majority of the employees had been coerced into joining the union. Though the Board might have excluded the employees who had voluntarily signed union cards before September 1 from the reimbursement provision, it did not abuse its discretion in not doing so since these employees may well have remained in the union only because of the status it had unlawfully acquired. For the courts to require a determination of the attitude of each employee in every case would impose impossible administrative burdens. Compare *F. W. Woolworth Co.* v. *NLRB*, 121 F. 2d 658, 663 (2d Cir. 1941). We have been admonished that although orders requiring reimbursement to employees for dues paid to unions unlawfully forced upon them "somewhat resemble compensation for private injury," we must not consider them solely

in that light since "they vindicate public, not private rights." *Virginia Electric & Power Co.* v. *NLRB*, 319 U.S. 533, 543 (1943). The fact that the union imposed in the *Virginia Electric* case was company-dominated does not appear to us to be a valid distinction here, at least as regards the union, from which the illegal activity emanated, and we see no other. In an appropriate case we might think a different view ought be taken with respect to an employer who has been forced into an unfair labor practice by economic pressure from a labor organization. Certainly it would seem more equitable for the Board to consider the relative responsibility of employer and labor organization in these cases and apportion any reimbursement liability accordingly than to apply a mechanical "joint and several" formula in every case. However, we do not need to decide this here since the employer has not objected.

We come finally to the clause in the Board's order quoted above which forbids the employer and the union from "entering into, maintaining, renewing or enforcing any agreement * * * which provides for obligations to the Union on the part of employees other than the payment of initiation fees and dues as a condition of employment." We think the only reasonable construction of the order is that the Board meant to ban such a clause in a new agreement even though the agreement "has been authorized as provided in Section 8(a)(3) of the Act." The Board's brief confirms this since it asserts (p. 13) that "the union-security agreement in this case is unlawful in that it exceeds the permissible statutory limits of preferential treatment for union members." We are therefore required to decide the question on which both the Board and this Court found it unnecessary to rule in *Biscuit and Cracker Workers Local Union No. 405*, N. L. R. B. 985 (1954), enforce-

ment granted, 222 F. 2d 573, 577 (2d Cir. 1955), whether a union security agreement is *ipso facto* an unfair labor practice if the union's constitution creates obligations other than payment of initiation fees and dues, unless the agreement expressly negates any claim by the union of a right to seek discrimination by the employer against a member who fails to comply. We hold it is not.

NLRB v. *Spector Freight System, Inc.*, 273 F. 2d 272, 275-76 (8th Cir. 1960), petition for certiorari filed 28 U. S. Law Week, cites abundant authority for the proposition that "the internal rules of a labor organization, designed to control its members, such as imposition of fines for failure to attend meetings, special assessments, and other penalties, not being 'periodic dues' may not be enforced by the union by a threat of loss of employment." However, the order here does not simply forbid a union from enforcing such rules by threat of loss of employment against a member and an employer from complying with such a demand. In effect, it prohibits the employer from entering into a union security agreement with a union whose constitution imposes on members any obligation other than the payment of initiation fees and dues unless the agreement expressly negates any right of the union to request discrimination against an employee for any default other than non-payment of these items, as did the agreement in *NLRB* v. *International Ass'n of Machinists*, 203 F. 2d 173, 174-75 (9th Cir. 1953). We have found no court decision that either upholds or negates the authority of the Board to do this. All the cases cited to us by the Board, as well as those in Judge Matthes' recent opinion in the *Spector* case, *supra*, arose from the discharge of an employee under a union security agreement, allegedly because of termination of union membership for a cause other than

non-payment of dues and initiation fees, and the remedy was simply reinstatement and a prohibition against similar action in the future. Nor are the Board cases clear. In *International Harvester Co.*, 95 N. L. R. B. 730 (1951), the Board held that a union security agreement requiring an employee to pay general assessments violated §8 (a)(3) and that a contract containing such a clause thus did not bar another union from seeking an election. *Accord, John Deere Planter Works*, 107 N. L. R. B. 1497 (1954). However, three years later, in the *Biscuit and Cracker Workers* case, *supra*, the Board declined to adopt the "discussion and rationale" of an examiner who held the mere existence of such a clause to be an unfair labor practice, and the Board's instant decision contains no discussion of the question.

The problem arises from the manner in which the Taft-Hartley amendment dealt with union security arrangements. Section 8(a)(3) of the National Labor Relations Act of 1935 made it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization," subject to a proviso that an employer was not thereby precluded from making an agreement with a labor organization not established as the result of an unfair labor practice and selected as representative of the employees as provided in Section 9(a), which would "require as a condition of employment, membership therein." The Labor Management Relations Act of 1947 qualified this broad exemption in three respects. The first was by inserting after the word "therein" the words "on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later." The second, not here material, was the provision now appearing in altered form in clause (ii) with

respect to elections. The third was the insertion of the final proviso reading as follows:

> "Provided further, that no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

The correlative provision in §8(b)(2) makes it an unfair practice for a labor organization:

> "(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

This makes it plain that the mere execution of an agreement limiting employment to persons who are already union members and not containing the 30-day clause is an unfair labor practice, as we held in *Red Star Lines* v. *NLRB*, 196 F. 2d 78 (2d Cir. 1952), and *NLRB* v. *Gottfried Baking Co.*, 210 F. 2d 722 (2d Cir. 1954). However, §8(a)(3) does not similarly condition the exemption of union security agreements from the sweep of the prohibitory language upon ex-

istence of an explicit provision negating a right of the union to seek the discharge of an employee after union membership has been terminated for reasons other than nonpayment of dues or initiation fees; it simply prohibits an employer from justifying any discrimination against an employee for nonmembership if he has reasonable grounds for believing this was the cause of the termination of membership. And if the mere making of such an agreement is not an unfair labor practice by the employer under §8(a)(3), it would not be one for a labor organization under §8(b)(2). Nevertheless, if the statute stood alone, we would be much inclined to depart from a literal reading in favor of a view that Congress intended to prohibit not only actual discrimination by a union and employer for breach of union obligations other than the payment of dues or initiation fees but also the creation of a setting in which employees would think discrimination by the employer would likely ensue from such a breach. See *Radio Officers Union* v. *NLRB*, 347 U. S. 17, 40 (1954); *Red Star Express Lines* v. *NLRB*, *supra*, at 81. However, we think the more literal reading is required in the light of the legislative history of the relevant sections of the Labor Management Relations Act of 1947 and of other legislation *in pari materia*.

In the Labor Management Relations bill as passed by the House on April 18, 1947, H. R. 3020, 80th Cong., 1st Sess., the analogue of the provisions with which we are here concerned was §8(d)(4). This said that, notwithstanding any other provision of § 8, it shall not constitute or be evidence of an unfair labor practice to make effective and carry out

> "* * * provisions of a collective-bargaining agreement between an employer and a labor organization that is certified under section 9 as the repre-

sentative of the employees in any bargaining unit of the employer (if such provisions are not in conflict with the law of any State in which the agreement is to be carried out), whereby the employer obligates himself in either of the following respects:

'(A) Not to retain in his employ in such unit any employee who, being a member of such organization thirty days from the date such provisions become effective, or becoming a member thereafter, fails to maintain his membership therein;

'(B) Not to retain in his employ in such unit any employee who fails to become a member of such organization within not less than thirty days after his employment, or within not less than thirty days after the date such provisions become effective, whichever last occurs, or who, having become a member within such period fails to maintain his membership therein;'

except that no such provision may have the effect of denying employment or continued employment to any individual who on or before the time required tenders to the organization the initiation fees and dues regularly imposed as a condition of membership therein and to whom, in spite of such tender, membership therein was denied, or of denying employment or continued employment to an individual who has been suspended or expelled from the organization on some ground other than nonpayment of regular dues."

The same language had been in the House bill as it had been reported on April 11. In contrast, the Senate bill, S. 1126, as reported on April 17, contained in 8(a)(3) the proviso "That no employer shall justify any discrimination," etc., similar to that in the Act as adopted.

This difference in language was not accidental. The report of the Senate Committee, S. Rep. No. 105, on April 17, said as to §8(a)(3), p. 20:

> "The committee did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But the committee did wish to protect the employee in his job if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and do not require the employer to inquire into the internal affairs of the union."

Even more significantly, it made the following explanation of the then §8(b)(2), p. 21:

> "It is to be observed that unions are free to adopt whatever membership provisions they desire, but that they may not rely upon action taken pursuant to those provisions in effecting the discharge of, or other job discrimination against, an employee except in the two situations described. Thus, an employee, even though he loses his union membership for reasons other than those set forth, may not be deprived of his job because of a contract requiring membership as a condition of employment."

The Senate amended the House bill to accord with its own. The conference report adopted the Senate wording of §8(a)(3) with a change not here important; the language with respect to unfair practices by labor organizations was somewhat altered but the change was not, and was not deemed to be, material. H.R. Rep. No. 510, pp. 41, 44.

The significance of this history is heightened by the action taken four years later when Congress for the first time permitted union security arrangements under

the Railway Labor Act, 45 U. S. C. §152. Paragraph Eleventh of that Section, added by the Act of Jan. 10, 1951, ch. 1220, 64 Stat. 1238, provides that notwithstanding any other law, carriers and duly designated labor organizations shall be permitted:

> "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership."

Since then Congress has twice amended Section 8(a)(3) of the Labor Management Relations Act, Act of October 22, 1951, ch. 534, §1(b), 65 Stat. 101; Act of September 14, 1959, §101(c), 73 Stat. 525, 542. On neither occasion has it sought to conform 8(a)(3) in this respect to the language of the Railway Labor Act; indeed, in the portion of the 1959 amendment, 8(f), which validates certain prehire agreements in the building and construction industry, Congress did not employ the Railway Labor Act formulation as to dues and initiation fees but provided only "That nothing in this subsection shall set aside the proviso to subsection (a)(3) of this section."

The history thus makes it plain that Congress did not mean to require, in cases governed by the Labor Management Relations Act, that a union desiring to enter into a union security agreement must change its constitution and by-laws to eliminate any provisions imposing obligations other than payment of initiation fees and dues. And when we read the language of §8(a) (3) in the light of the history, we find ourselves unable to construe it as meaning that a union may not retain such provisions in its constitution and by-laws unless in the agreement with the employer it expressly disclaims any intention to enforce them as a condition of employment. Rather, the safeguard to the employee is postponed until discriminatory action is taken. That is what the words say, and the history shows that is what they were meant to say—that an employee "may not be deprived of his job because of a contract requiring membership as a condition of employment." We need not here determine what action in addition to reinstatement the Board may require when such a violation has occurred. While this solution may seem wanting in symmetry, the situation is not dissimilar from the ruling in *Local 1976, Brotherhood of Carpenters and Joiners* v. *NLRB*, 357 U. S. 93, 99-100 (1958), that the Taft-Hartley amendment did not ban the making of an agreement with a "hot cargo" clause but only certain types of action to make it effective. Cf. §8(e) added to the Labor Management Relations Act by the Act of Sept. 14, 1959, 73 Stat. 525, 542. Here, as there, "It is relevant to recall that the Taft-Hartley Act was, to a marked degree, the result of conflict and compromise between strong contending forces and deeply-held views on the role of organized labor in the free economic life of the nation and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests * * *"

Paragraph IA(1) of the order is therefore modified by excising the words "which provides for obligations to the Union on the part of employees other than the payment of initiation fees and dues, or" and paragraph IIA(1) by excising the words "which provides for obligations to the Union on the part of employees other than the payment of initiation fees or dues as a condition of employment, or." As so modified the order will be enforced.

2. *Supplemental Opinion of June 16, 1960:*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 242—October Term, 1959

(Petition for Rehearing Filed May 31, 1960. Decided June 16, 1960)

Docket No. 25868

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

REVERE METAL ART CO., INC., and AMALGAMATED UNION LOCAL 5, UAW, Independent, RESPONDENTS

Before: LUMBARD, Chief Judge, MOORE and FRIENDLY, *Circuit Judges*

On Petition for a Rehearing

PER CURIAM:

The National Labor Relations Board petitions for rehearing of so much of our decision of May 6, 1960 as set aside a portion of its order relating to the union security agreement. It alleges, *first*, that, under §10(e) of the Act, 29 U.S.C. §160(e), the point was not properly before us and, *second*, that our decision was wrong.

(1) Throughout the proceeding before the Board, the union resisted the General Counsel's contention that the union security agreement was unlawful because of its alleged incorporation by reference of the provisions of the union's constitution creating obligations other than the payment of initiation fees and

dues, and it excepted to the remedy recommended by the Examiner, which included the clauses we have ordered stricken. Although the exceptions may have fallen "short of desirable specificity," they were sufficient to preserve all grounds of objection, and certainly objections as to the legal power of the Board, as those in *May Department Stores Co.* v. *NLRB*, 326 U. S. 376, 387 (1945), were held to be.

(2) On the merits the NLRB cites certain additional Board decisions. *Keystone Coat, Apron & Towel Supply Co.*, 121 NLRB 880, 884-85 (1958), is simply cumulative of the Board holdings cited in our opinion, namely, that a provision in a union security agreement specifically requiring the payment of assessments as well as initiation fees and dues, renders the agreement illegal *per se*. On the other hand, in *Spartan Aircraft Co.*, 98 NLRB 73, 75 (1952), where there was no reference to assessments in the agreement itself, the Board upheld a discharge clause substantially identical with that here, construing it as meaning "that the obligation to discharge extends only to situations recognized as valid by the statute." *Zangerle Peterson Co.*, 123 NLRB No. 129 (1959), reveals a difference of opinion within the Board as to the relative scope of these two principles. The only decision cited which we think requires comment is *H. Muehlstein & Co.*, 118 NLRB 268, 276 (1957). This suggested that an agreement which affirmatively provided that employees should pay union assessments as well as dues violated §8(a)(1), although since there was no evidence of enforcement of the assessment provision, there was no violation of §8(a)(3). The rationale of this view is explained in *Convair*, 111 NLRB 1055, 1057 (1955), *modified sub nom. NLRB* v. *International Ass'n of Machinists*, 241 F. 2d 695 (9th Cir. 1957), as being that an agreement threatening loss of employment to an employee who fails to pay

union assessments will "interfere with, restrain or coerce employees in the exercise of the rights guaranteed" in §7, specifically "the right to refrain from any or all such [union] activities." Insofar as *Machlstein* and *Convair* deal with §8(a)(3), they support our decision, and we are unable to see how the argument is advanced by the reference to §§8(a)(1) and 7. For §7 qualifies the words quoted above by adding "except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment" as authorized in §8(a)(3), which provides that nothing in the Act shall preclude an agreement conforming to its terms. We are thus brought back to the question whether §8(a)(3) outlaws the making of an agreement that does not expressly negate a right to discharge for noncompliance with union constitution provisions other than the payment of initiation fees and dues or, as we have held, merely prohibits action by the union or employer to carry it out. We have no doubt that when such action is taken, both §8(a)(3) and §8(a)(1) are violated, but, in our view, this happens then and not before.

We recognize the question to be debatable, as our opinion plainly intimated. We have thought our construction to be required to give effect to the sharp difference in the treatment in §8(a)(3) of the 30-day clause, on the one hand, and union requirements other than initiation fees and dues, on the other, particularly in the light of the legislative history and the different wording of the Railway Labor Act, 45 U.S.C. §152, Paragraph Eleventh. Having carefully considered the Board's petition, we adhere to that view.

3. *Decree of July 26, 1960*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 25868

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

REVERE METAL ART CO., INC.; AMALGAMATED UNION, LOCAL 5, UAW, INDEPENDENT, RESPONDENTS

DECREE ENFORCING, AS MODIFIED, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: Lumbard, Chief Judge, Moore and Friendly, Circuit Judges

THIS CAUSE came on to be heard upon a petition of the National Labor Relations Board to enforce an order dated March 10, 1959, and directed against Revere Metal Art Co., its officers, agents, successors and assigns, and Amalgamated Union, Local 5, UAW, Independent, its officers, representatives, agents, successors and assigns. The Court heard argument of respective counsel on March 3, 1960, and considered the briefs and transcript of record filed in this cause. On May 11, 1960, the Court, being fully advised in the premises, handed down its decision enforcing, as modified, the order of the Board, and thereafter on June 16, 1960, the Court denied the Board's petition for rehearing. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED by the United States Court of Appeals for the Second Circuit that:

I. The Respondent Company, Revere Metal Art Co.,

Inc., New York City, its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Entering into, maintaining, renewing, or enforcing any agreement with the Respondent Amalgamated Union, Local 5, UAW, Independent, which requires its employees to join, or maintain their membership in, such labor organization, as a condition of employment, unless such agreement has been authorized as provided in Section 8(a)(3) of the National Labor Relations Act (hereinafter called the Act);

(2) Recognizing and dealing with said Local, or any successor thereto, as the collective bargaining representative of any of its employees for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Local 5 shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the employees of the said Respondent Company;

(3) Performing or giving effect to its agreement of November 13, 1956, with said Local 5, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with Local 5 relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Amalgamated Union, Local 5, UAW, Independent, shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the employees of said Respondent Company, provided, however, that nothing herein shall be construed to require the Company to vary any substantive provisions of such agreement or to prej-

udice the assertion by the employees of any rights which they may have thereunder;

(4) Soliciting checkoff authorizations for, or membership in the said Local by threats or otherwise, or in any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

B. Take the following affirmative action:

(1) Withdraw and withhold all recognition from Amalgamated Union, Local 5, UAW, Independent, as the representative of any of its employees for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other condition of employment, unless and until said Local shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent Company's employees.

(2) Jointly and severally with the said Local reimburse its employees for any initiation fees, dues, or other monies paid or checked off as a condition of employment pursuant to the agreement of November 13, 1956, or any extension, renewal, modification, or supplements thereof, or any agreement superseding it;

(3) Preserve and make available to the Board or its agents, upon request, for examination and copy-

ing, all records and reports necessary to analyze the amount of monies due under the terms of this Decree;

(4) Post at its plant, in New York City, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the aforesaid Regional Director for the Second Region shall, after being duly signed by the Company, be posted by it immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material;

(5) Post at the same places and under the same conditions as set forth in (4) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Union's notice herein marked Appendix B;

(6) Notify the Regional Director for the Second Region (New York, New York) in writing, within ten (10) days from the date of this Decree what steps the Respondent Company has taken to comply herewith.

II. The Respondent Union, Amalgamated Union, Local 5, UAW, Independent, New York City, its officers, representatives, agents, successors and assigns shall:

A. Cease and desist from:

(1) Entering into, maintaining, renewing, or enforcing any agreement with the Company which grants the Union exclusive recognition, or which requires employees to join, or maintain their membership in the Union as a condition of employment, un-

less such agreement which grants exclusive recognition or requires membership has been authorized as provided in Section 8(a)(3) of the Act;

(2) Acting as the exclusive bargaining representative of any of the employees of Respondent Revere Metal Art Co., Inc., for the purpose of dealing with said Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said Union shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Company's employees;

(3) In any like or related manner causing or attempting to cause the Company to discriminate against any employee in violation of Section 8(a) (3) of the Act;

(4) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Take the following affirmative action:

(1) Jointly and severally with the Company reimburse the Company's employees for any initiation fees, dues, or other monies paid or checked off as a condition of employment pursuant to the agreement of November 13, 1956, or any extension, renewal, modification, or supplements thereof, or any agreement superseding it;

(2) Preserve and make available to the Board or its agents upon request, for examination and copying, all records necessary to analyze the amounts of monies due under the terms of this Decree;

(3) Post at its offices and meeting halls in New York City, copies of the notice attached hereto and

marked Appendix B. Copies of said notice, to be furnished by the Regional Director for the Second Region (New York, New York), shall, after being duly signed by the Union's representative, be posted by it immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material;

(4) Mail to the said Regional Director signed copies of Appendix B for posting by the Company at its New York City plant, as provided above herein. Copies of said notice to be furnished by the aforesaid Regional Director, shall, after being signed by the Respondent Union's representative, be forthwith returned to the Regional Director for disposition by him.

(5) Notify the said Regional Director, in writing, within ten (10) days from the date of this Decree, what steps the Respondent Union has taken to comply herewith.

[Appendices to decree omitted.]

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